

Faculty of Law

Defining tomorrow

**IMPLEMENTATION OF BY-LAWS-
CHALLENGES EXPERIENCED IN
CITIES AND SMALLER
MUNICIPALITIES
PRESENTED BY: DANIE NEL**

WE WILL LOOK AT.....

- The legislative and executive powers and obligations of municipalities;
- Current reality;
- Challenges experienced;
- Possible solutions;

Legislative and executive powers of municipalities

- **Constitution**
- S156 – Municipality may make and administer by-laws for the effective administration of matters it may administer (Schedules 4A and 5B)
- **Systems Act**
- S 11 – Municipality exercises legislative or executive authority by –
 - Passing by-laws
 - Implementing by-laws

S 55 – MM responsible for administration and implementation of by-laws and other legislation;
- **Structures Act**
- S 15 - Review and rationalisation of existing municipal by-laws –reflected in notices of establishment 2000

Executive Obligations

- Obligation to provide government at a local level and to execute the functions associated therewith. (Sec 11 Systems Act)
- *Implement and administer* legislation in relation thereto;
- *Provide the services* associated therewith and provide an administration to do so;
- *Develop policy* in relation thereto;
- *Develop by-laws to effectively govern* within those functional areas.
- Failure to fulfil executive obligations may result in intervention by provincial executive (Oudtshoorn)

Developmental duties

- Sections 152 and 153 of Constitution centres around:
 - democracy (representative, accountable and participatory governance)
 - development (service delivery, social and economic development)
 - safe and healthy environment (healthy and secure environment)
 - co-operative governance (participation in national and provincial programmes)

NB – Councils when considering adoption of a by-law should ask the question:

- Does this by-law promote or impede the principles set out above?

Current reality

- Many municipalities have not yet reviewed and rationalised by-laws – Structures Act (effect thereof)
- Limited capacity to draft by-laws (copy and paste)
- By-laws do not provide for measures to promote accountability of councils and officials to residents – *Drakenstein Waste By-law* (Time for official audit??)
- Lack of knowledge and support at managerial level w.r.t. enforcement and prosecution process
- Political unwillingness and interference
- Municipalities losing vast amounts of revenue
- Justice system not supportive – by-law offences regarded as petty offences (municipal courts)

Current reality cont.....

- General attitude of lawlessness (building plans, health compliance, tampering with water & electricity meters, land use)
- Municipal stats showing very poor enforcement of by-laws - focus on traffic offences;
- Municipalities biggest perpetrators of their own by-laws (water, sanitation, waste, air quality)















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Load Shedding in the Friendly City!

ILLEGAL CONNECTIONS: The Herald reader Neels van Zyl sent in this picture and asks: 'Is this the reason why Bay residents have to pay connection fees again to sponsor all the illegal electricity being used from substations in Walmer Township and other townships in Port Elizabeth? What is the municipality doing to solve this problem?'

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Editorial

BRIGHTON, ENGLAND - OCTOBER 13: A woman lies on a bench after leaving a bar in Brighton City Centre on October 13, 2005 in Brighton, England. Pubs and clubs are preparing for the new Licensing laws due to come into force on November 24 2005, which will allow pubs and clubs longer and more flexible opening hours. Opponents of the law believe this will lead to more binge-drinking with increased alcohol related crime, violence and disorder while health experts fear an increase in alcohol related diseases and addiction. (Photo by Matt Clardy/Getty Images)

Prostitution and drugs



Challenges faced

- No clear definition of functional areas belonging to different spheres of government (Schedules 4A & 5B)

Examples

Schedule	Included local functional area	Inclusive provincial functional area
4A	Air Pollution	Pollution Control (4A) Environment (4A)
4B	Municipal Health Services	Health Services (4A)
4B	Municipal Planning Building Regulations	Regional Planning & Development (4A) Urban & Rural Development (4A)
5B	Refuse removal, refuse dumps and solid waste disposal	Environment (4A) Health Services (4A)

Challenges cont.....

- Co-operative governance and the IGR Framework Act not promoting accountability or effective service delivery
- Division of powers and functions between local and district municipality's (grey areas – Air Quality)
- Capacity to implement and enforce by-laws (legal admin support, defensibility of notices, (PAJA); financial constraints)
- Proliferation of town planning schemes (municipal planning by-laws not integrated)
- Lack of knowledge to obtain court orders/interdicts where applicable
- Quality of law enforcement training, no proper appointment of law enforcement officials

Solutions??

- Keep by-laws simple, understandable and implementable – do not repeat national & provincial legislation in by-laws
- Choose service providers with sound knowledge of local government issues to draft by-laws
- Consider By-laws with a purpose

Examples

- Swartland Building Plans (enhanced control & building plan fees)
- Breede Valley Credit Control (one account)

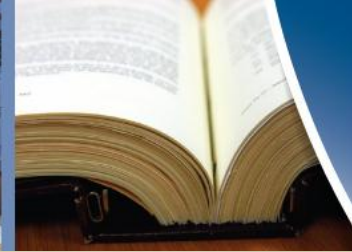
Solutions cont.....

- Breede Valley – (Special Rating Areas – increased security & by-law enforcement, cleaning services & urban management)
- More frequent use of court orders/interdicts where applicable (*Botha vs Andrade SCA 2008*) and section 21 of NBR
- Streamline prosecution processes (relationship with prosecutors)
- Consider administrative fines similar to sec. 24G NEMA
- Contravention levies in respect of unlawful use of land

Solutions cont.....

- Develop implementation/enforcement strategy with holistic approach to enforcement involving all agencies and govt. departments where necessary (Point Road)
- Training with purpose - focus on by-laws & legislation
- Proper delegation of discretionary functions provided for in by-laws

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